

February 27, 2009

Page 1

BEFORE THE STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:	)	
	)	
STATE OF CALIFORNIA, Employer,	)	Unfair Practice
and PEACE OFFICERS OF CALIFORNIA,	)	Charge No.
Petitioner, and CALIFORNIA	)	SA-SV-171-S
STATEWIDE LAW ENFORCEMENT ASSOC.,	)	
Exclusive Representative.	)	
	)	
_____	)	

FEBRUARY 27, 2009

SHAWN CLOUGHESY  
Administrative Law Judge

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street, Room 214  
Sacramento, CA

Transcribed by: Leisa M. Miller

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APPEARANCES

Administrative Law Judge

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INDEX OF WITNESSES

--oOo--

Petitioner's Witnesses	Page
CHRISTOPHER P. LEWIS	
Direct Examination by Mr. Rose	21
Cross-Examination by Mr. Messing	35
Redirect Examination by Mr. Rose	76
Recross-Examination by Mr. Messing	82
DIEGO BUSATTO	
Direct Examination by Mr. Rose	90
Cross-Examination by Mr. Messing	95
Redirect Examination by Mr. Rose	109
Recross-Examination by Mr. Messing	111
Further Redirect Examination by Mr. Rose	112
BRANDON SHOEMAKER	
Direct Examination by Mr. Rose	117
Cross-Examination by Mr. Messing	122
Redirect Examination by Mr. Rose	138
Recross-Examination by Mr. Messing	159
JESSE TOWNSEND	
Direct Examination by Mr. Rose	177
Cross-Examination by Mr. Messing	182

1 Index of Witnesses (Continued):

2 Petitioner's Witnesses Page

3 **GARY SCHALES**

4 Direct Examination by Mr. Rose 210

5 Cross-Examination by Mr. Messing 216

6 Redirect Examination by Mr. Rose 240

7 Recross-Examination by Mr. Messing 246

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1 (Exclusive Representative's Exhibit L  
2 received in evidence.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.  
4 (Off the record.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
6 We're back on the record. We have another witness called  
7 by the Petitioner. I'm going to ask this witness to  
8 raise your right hand.

9 (Witness sworn by the Judge.)

10 THE WITNESS: Yes, I do.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state  
12 your name for the record, spelling your last name.

13 THE WITNESS: Gary Schales. S-C-H-A-L-E-S.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And I've  
15 got a couple preliminary questions for you.

16 But first, I am marking as Petitioner Exhibit Y what  
17 appears to be a Declaration of Gary Schales.

18 (Petitioner's Exhibit Y marked for  
19 identification.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And by the way,  
21 I'm admitting the Declaration of Jesse Townsend, X.

22 (Petitioner's Exhibit X received in  
23 evidence.)

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Petitioner Y.  
25 And I have a couple preliminary questions for you, sir.

1 It looks like you already have the Declaration in front  
2 of you. But did you ever receive a copy or an e-mail  
3 containing the transcripts of the first two days of  
4 hearing in this matter?

5 THE WITNESS: No, I didn't. Well, not that I'm aware  
6 of.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
8 Well, then we ask the second question. Did you review  
9 any of the transcripts? Maybe that'll be the easier  
10 question to answer. Or the first two days of this --

11 THE WITNESS: I did not look at transcripts. I did  
12 see something on the web.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well, let  
14 me ask this question. What'd you see on the web?

15 THE WITNESS: I looked at CSLEA's website.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All  
17 right. I know what you're talking about, then. So are  
18 you talking about somewhat of an encapsulation of what  
19 happened during the hearing?

20 THE WITNESS: Yes.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Very  
22 good. All right. You have Petitioner Y before you, sir.  
23 If you can review that and/or take a look at it and tell  
24 me what it is?

25 THE WITNESS: I'm sorry.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What do you  
2 recognize this document -- is this your Declaration?

3 THE WITNESS: Yes.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
5 turning to the signature page of this document, is that  
6 your signature on page 10?

7 THE WITNESS: Yes, it is.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
9 it on the date and in the location set forth in the  
10 Declaration?

11 THE WITNESS: Yes, I did.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
13 is what is contained in this Declaration true and correct  
14 to the best of your knowledge?

15 THE WITNESS: Yes.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And  
17 I think with that -- and you are a Fish and Game Warden  
18 Pilot?

19 THE WITNESS: That is correct.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You've probably  
21 got the job that most people would love to have, I would  
22 imagine. So you might be one of the lucky ones.

23 THE WITNESS: It's a lot of work.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: With that,  
25 Mr. Rose, go ahead.

1 MR. ROSE: Thank you.

2 TESTIMONY OF

3 GARY SCHALES,

4 Having been duly and regularly sworn, testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. ROSE:

8 Q. Good afternoon, sir. Thank you for your  
9 patience. And in my next life I'd like to come back and  
10 do your job. But presently I'm in the seat here, and  
11 have the privilege of asking you a few additional  
12 questions.

13 Looking at your Declaration, page seven, under job  
14 duties, paragraph 40 begins with, "As a Warden Pilot,  
15 Department of Fish and Game, I pilot an airplane and  
16 perform the following duties," colon, and then there's a  
17 list. Do you see that?

18 A. Yes. Yes, I do.

19 Q. Other than the list A through I there, are there  
20 any additional activities that you have engaged in as a  
21 Warden Pilot for the Department of Fish and Game?

22 A. I -- nothing comes to mind other than what's  
23 written. I did review it.

24 Q. Do you engage in any -- well, then, let me ask  
25 you this: Have you ever had any unusual occurrences

1 while piloting your airplane for the State of --  
2 Department of Fish and Game?

3 A. Yes, I have.

4 MR. MESSING: Object. Vague and ambiguous.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean as far  
6 as enforcement?

7 MR. ROSE: Well, if it's specific and not ambiguous,  
8 then it's leading. I'm trying to ask an open --

9 MR. MESSING: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right, sir,  
11 go ahead.

12 THE WITNESS: Well --

13 BY MR. ROSE:

14 Q. Did you see any -- have you experienced anything  
15 that you consider to be unusual while piloting your  
16 airplane for the State of California?

17 A. Yes, I have.

18 MR. MESSING: What, a UFO?

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No, we're not  
20 talking about UFOs. We're talking about something within  
21 your duties. Go ahead.

22 BY MR. ROSE:

23 Q. I think it's a pretty standard question for a  
24 peace officer.

25 A. Sure.

1 Q. Okay.

2 A. While landing at Bishop not even six months ago I  
3 had an individual run right across -- right in front of  
4 me while I was 75 feet off the ground. And I --  
5 actually, once I got on the ground, I detained that  
6 subject and actually ran his information to check him for  
7 wants and warrants. So, yeah, that's pretty unusual.

8 Q. Any others than you can think of?

9 A. Not at this time.

10 Q. Okay. Are you -- your classification is  
11 represented by CSLEA?

12 A. That is correct.

13 Q. How long have you been in a classification that  
14 has -- that is represented by CSLEA and Bargaining Unit  
15 7?

16 A. Nine -- it's been over nine years. About nine  
17 years, two months.

18 Q. Are you currently satisfied with CSLEA's  
19 representation, the adequacy of it?

20 A. No.

21 Q. Have you always been dissatisfied, or is that a  
22 recent change, or when did you first become dissatisfied?  
23 Let me ask you that.

24 A. After the ratification of the last contract.

25 Q. And why were you dissatisfied with CSLEA's

1 representation after ratification of the last contract?

2 A. I called Personnel and talked to them about the  
3 Warden Pilot classification and the Warden  
4 classification, and I said -- talking about actually pay.  
5 And they said, "You are not included." And I said, "What  
6 do you mean I was not included, or my classification was  
7 not included?" "You're -- you did get a increase in pay,  
8 but you will not get the increase in pay like the wardens  
9 that you work with. You will get a three percent  
10 increase in pay."

11 And I called -- I called then president of the Fish  
12 and Game Warden's Association, Joe Mello, and he did call  
13 CAUSE. And we -- I think there was some conversations  
14 that, oh, that was a -- that was an oversight. It was a  
15 mistake. We'll take care of it. We called back about a  
16 hour later and they said DPA had stated that it was going  
17 to be that way, and that was the end of it. And that DOJ  
18 pilots need to make more money. And that's where we're  
19 at.

20 Q. Why are you dissatisfied with that?

21 A. Well, I just think that, you know, that's great  
22 for DOJ pilots. But, you know, I'm not talking about  
23 that classification. I'm talking about Warden Pilots and  
24 all the work that they do and what is deserving of them.

25 Q. Do you know whether or not DOJ pilots are in

1 Bargaining Unit 7?

2 A. I am told that they are.

3 Q. Do you know whether or not DOJ pilots are peace  
4 officers?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you don't  
6 know, say you don't know. But if you know --

7 THE WITNESS: Actually, I've met some that are  
8 non-sworn, and then they do have sworn peace officers at  
9 DOJ. So they have -- I think they have two different  
10 classifications.

11 BY MR. ROSE:

12 Q. Look at page five, please, of your Declaration,  
13 paragraph 31. It says, "As a Warden Pilot, Department of  
14 Fish and Game, I cooperate with State Police, California  
15 Highway Patrol and local police when they require sworn  
16 backup assistance throughout the state." Do you see  
17 that?

18 A. Yes.

19 Q. How often have you performed that activity during  
20 your career as a Fish and Game pilot, Warden Pilot?

21 A. Probably anywhere from 10 times, maybe 20 times.  
22 I don't know. It's an everyday thing. I'm always  
23 monitoring the radio, always in communication with the  
24 other agencies, whether it's the sheriff's office, CHP.  
25 It's just an everyday thing.

1 Q. When you do that, what types of agencies are you  
2 working with? Can you identify some?

3 A. Fresno --

4 Q. Law enforcement agencies.

5 A. Fresno County Sheriff's Office if there's missing  
6 persons, BOLs, or be on the lookout for individuals,  
7 cars, while on patrol myself, either on the river or on  
8 the coastline while working low tide patrols.

9 CHP -- we were doing a low tide patrol three weeks  
10 ago, four weeks ago, and CHP and I were talking. They  
11 were going up Highway 1. And we were down at the  
12 coastline looking for people. And, hey, we're looking  
13 for a Honda, or, you know, with a suicidal individual.

14 I called our officers, advised them. We had five or  
15 six officers. And because we're not hooked up  
16 communication-wise other than a Victor airway or a air  
17 radio through the different air units, CHP, the local  
18 sheriff's office, some PD offices, we actually all  
19 communicate.

20 Q. Now, on that paragraph I see -- I don't see any  
21 reference to federal law enforcement agencies. Is that a  
22 deliberate omission, or have you worked with federal law  
23 enforcement agencies?

24 A. Occasionally. Mostly on the ground. There is --  
25 actually, yeah, I need to correct that. BLM. Search and

1 rescue working with BLM.

2 Q. What do you do with BLM search and rescue?

3 A. Well, generally when I fly, I fly over a lot of  
4 BLM land. It's usually the land that is not owned by  
5 private individuals that, you know, you can't really put  
6 a building on and that sort of thing. And so they are  
7 patrolling in their own area and looking for lost  
8 persons, lost hunters, and have communicated with BLM  
9 officers in the past.

10 Q. Other than BLM do you have any other interaction  
11 or work with any other federal entities?

12 A. I can't think of any. I really don't think about  
13 it after the task. I -- if they're there, I work with  
14 them.

15 MR. ROSE: Okay. Nothing further.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
17 Ready for cross?

18 MR. MESSING: Sure.

19 CROSS-EXAMINATION

20 BY MR. MESSING:

21 Q. Now, going to your Declaration here, paragraph 30  
22 says as a Warden Pilot you may cooperate with the  
23 California Department of Parks to enforce Fish and Game  
24 violations. Do you see that?

25 A. Yes.

1 Q. Are all of those violations criminal violations,  
2 or are some of them non-criminal?

3 A. Well, it could be an infraction. There could be  
4 poachers, so, yes, that's criminal.

5 Q. Okay. And are there some that are not criminal?

6 A. I do not know that because I'm not down there  
7 checking them.

8 Q. Well, it says that you cooperate with them in  
9 enforcing Fish and Game violations. How do you cooperate  
10 with them if you're not down there dealing with the  
11 violations?

12 A. Patrolling the waterway with the airplane, and  
13 advising them of any fishermen, or if there's any  
14 streambed alterations, if there is anything, pollution,  
15 anything.

16 Q. Okay.

17 A. Anything of suspicion

18 Q. So you --

19 A. Reasonable suspicion.

20 Q. Okay. So you wouldn't know if, for example,  
21 there's a degradation of property, that could be from  
22 natural causes, or that could be a criminal issue, but  
23 you report it and somebody on the ground looks into it?

24 A. I think I'd know if it was criminal. But if all  
25 the elements are there, then I could call it criminal. I

1 only have a reasonable suspicion if part of the element  
2 is there.

3 Q. Right. But as part -- as your -- part of your  
4 duties with Fish and Game, you're concerned about also  
5 preserving the natural resources even if there is not a  
6 criminal violation, right?

7 A. Absolutely.

8 Q. Okay. And it says here, by the way, that you  
9 receive cooperation when you require sworn backup  
10 assistance throughout the state.

11 A. Uh-hmm.

12 Q. What kind -- what's an example of when you  
13 require backup assistance?

14 A. While patrolling. The example that I just used.  
15 Cooperating with another agency, CHP. I do the same  
16 thing. Hey, we're looking for this person that was back  
17 here. It was a hunter trespass issue. I'd like to  
18 question that individual, or our officers would like to  
19 question that individual.

20 Q. But you're in the air? You're not actually on  
21 the ground dealing with that situation?

22 A. Sure. But I can tell if somebody is trespassing.  
23 That is -- that is an example.

24 Q. Now, you work a fixed wing?

25 A. Yes.

1 Q. Okay. Now, it says here that you patrol -- this  
2 is on page seven. So when you're in the air, you're --  
3 is your time essentially patrolling?

4 A. It is -- it is patrolling, biological science  
5 surveys. I am -- basically, I am looking because we do  
6 not have the personnel to be at every place at all times,  
7 so we actually utilize the airplane even when I'm doing  
8 non-enforcement issues at that time.

9 Q. You do a lot of important non-enforcement --

10 A. Uh-hmm.

11 Q. -- functions, correct?

12 A. Right.

13 Q. So, for example, the biological surveys are not a  
14 criminal enforcement issue, right?

15 A. It could lead to it.

16 Q. But predominantly it's for other purposes,  
17 correct?

18 A. Studies, environmental impacts, possible crimes  
19 that could manifest later.

20 Q. Okay. Biological surveys also serve to alert the  
21 department as to where game needs to be protected or  
22 increased, or there are problems with other natural  
23 resources, correct?

24 A. That's correct. I am support for the biological  
25 services for our surveys and such. And I do not -- I

1 don't know exactly -- I'm told the telemetry and I do it.

2 Q. Okay.

3 A. And I do it for them.

4 Q. Now, do you make aerial surveys?

5 A. Yes.

6 Q. Okay. And what is the purpose of an aerial  
7 survey?

8 A. Either to take a statistical count or -- which  
9 could be taking a sample of a population and the  
10 scientists are studying that sample to figure out what  
11 the outcome is of that population.

12 Q. You wouldn't consider that undertaking a criminal  
13 enforcement action, would you?

14 A. No.

15 Q. Okay. Let's see. The same with making physical  
16 counts of herds of game animals, you wouldn't consider  
17 that to be a criminal enforcement action, would you?

18 A. Not at that time. If you mean like a hot call,  
19 no. But if it's leading to a poaching problem, sure.

20 Q. Okay. And the same with physical counts of  
21 plants and fish?

22 A. Plants. I don't look at plants.

23 Q. Well, it says in your Declaration, page seven,  
24 sub 40(i), "I make physical counts of plants and fish."

25 So did you write that?

1 A. I have reviewed it. It depends on what you mean  
2 as far as plants. What are you talking about?

3 Q. Well, when --

4 A. Are we talking about illicit plants?

5 Q. When you said you reviewed it, what I asked you  
6 is did you -- did you write this Declaration?

7 A. No. I reviewed it and corrected it.

8 Q. Well, who wrote the Declaration?

9 A. It came to me, and I went through and I corrected  
10 where it needed to be corrected.

11 Q. So you don't know who wrote this Declaration?

12 A. I -- no. No, I don't. No, I do not.

13 Q. Who sent it to you for correction?

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you  
15 know.

16 THE WITNESS: I don't -- I cannot recall.

17 BY MR. MESSING:

18 Q. Did it come to you via e-mail or mail? Do you  
19 recollect?

20 A. It came to me --

21 MR. ROSE: Objection. Relevance. Evidence Code  
22 section 352.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That question  
24 [sic] is sustained.

25 MR. ROSE: And Rose Law from PC is on every page, by

1 the way.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. But  
3 the question I -- getting back to the real question that  
4 had to do with plants.

5 THE WITNESS: Right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what do you  
7 do, if anything, in regards to plants?

8 THE WITNESS: Marijuana plants. Other than that,  
9 I -- when you said plants, I am thinking, you know -- I  
10 thought you meant poppies on the side of the hill.  
11 Obviously, I -- that was something that I may have  
12 overlooked. If it's Cannabis, that's fine. I -- you  
13 know, sure.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, don't  
15 worry what Mr. Messing thinks. We don't.

16 BY MR. MESSING:

17 Q. It's not what I think. I'm asking you what you  
18 wrote and what you meant.

19 A. Uh-hmm.

20 Q. So this is your Declaration.

21 MR. ROSE: Objection. Argumentative.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

23 BY MR. MESSING:

24 Q. As a Warden Pilot it says that you make airline  
25 inspections, correct?

1 A. Correct.

2 Q. That's a very important part of your job,  
3 correct?

4 A. I make -- I am the only inspector in the state.

5 Q. And how many Warden Pilots are there?

6 A. There are six.

7 Q. There's six Warden Pilots. How many Senior  
8 Warden Pilots are there?

9 A. There is one.

10 Q. Who is that?

11 A. That is Ran Van Venthusen [phonetic].

12 Q. Okay. So isn't it true that you may spend up to  
13 half of your time performing airline inspections,  
14 maintenance, repair work to the engines, and that sort of  
15 thing?

16 A. I -- no. No. I wouldn't say half of my time.  
17 It's -- it depends. If I have a lot of flying and a lot  
18 of missions, a lot of law enforcement, then I'll go  
19 through a stretch where I'm working quite a bit. If I  
20 have a oil change, a hundred hour inspection, I'll go  
21 ahead and take care of it. That's usually if there's no  
22 problems. Takes four or five hours to do that. Because  
23 I know my airplane. If I'm called upon to do an  
24 inspection up here at Sacramento, that's a couple of days  
25 to do that.

1 Q. So about how much of the time -- what percentage  
2 of the time on the average do you believe that you  
3 perform airline -- airplane inspections, necessary  
4 maintenance and repair work to airplanes and engines,  
5 update flight manuals, and perform other related work?

6 A. I'd say a third of my -- of my time.

7 Q. A third?

8 A. I would say a third of my time on that.

9 Q. Okay. Well, have you ever seen a Duty Statement  
10 for your position?

11 A. I may have reviewed parts of one.

12 Q. Okay. Well, I'm going to give you a document.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

14 MR. MESSING: I'm going to mark it for  
15 identification.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are on  
17 Exclusive Rep -- thank you, sir. Thank you. We're on  
18 Exclusive Rep M, what appears to be a Duty Statement for  
19 the position of Warden Pilot. It appears to -- let's see  
20 if I can see any identifiers here. (Unintelligible)  
21 Services, Riverside. Single page in length. We have a  
22 supervisor's name in regards to Senior Warden Pilot.

23 (Exclusive Representative's Exhibit M  
24 marked for identification.)

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And witness has

1 M before him.

2 BY MR. MESSING:

3 Q. Okay. Does this look like the Position Statement  
4 that you've previously seen?

5 A. I have not seen this document before.

6 Q. Do you believe that you saw a different Position  
7 Statement that was not the same as this one?

8 A. When I interviewed for the position, there was  
9 a -- there was a flier and it talked about this. But it  
10 went into great length as to what was required. This is  
11 only -- this is a general of what I do.

12 Q. Well, this indicates 50 percent for the portion  
13 that I --

14 A. Sure.

15 Q. -- indicated to you before.

16 A. Uh-hmm.

17 Q. You believe that it's only a third of what you  
18 do? Is that what you said?

19 A. For me. It might be different for somebody else.

20 Q. Didn't you say that you are the person who does  
21 most of the airplane inspections and maintenance?

22 A. On my airplane. And then I perform a annual  
23 inspection --

24 Q. Okay.

25 A. -- on the other airplanes. But with my airplane,

1 I maintain that airplane all the -- all the time. It's  
2 something that I just do. But I wouldn't say for me it's  
3 50 percent. I'd say more of a 30 -- between 30 and 35  
4 percent.

5 Q. Okay. So do you -- do you have any reason to  
6 know whether or not this would be inaccurate for other  
7 Warden Pilots in the state?

8 A. I have no idea.

9 Q. Okay.

10 A. They do -- they do not work for me.

11 Q. Okay. Just looking at the other half of this,  
12 where it says, "Perform law enforcement day and night by  
13 patrol to spot violators," et cetera, that -- you see  
14 that half of it?

15 A. Uh-hmm.

16 Q. It says, "Assist in biological surveys, fish  
17 planting and conservation work through aerial  
18 observation, photographing wildlife, or taking physical  
19 game herd counts."

20 A. Uh-hmm.

21 Q. Those are predominantly non-criminal enforcement  
22 actions, correct?

23 A. That I would say yes.

24 Q. Okay. And would you say that out of the  
25 remaining two-thirds or so of the time that you spend on

1 the activities that would be listed in the top half of  
2 this, the long paragraph, I should say --

3 A. Uh-hmm.

4 Q. -- that also part of that time is devoted to the  
5 things which I just indicated which are non-criminal  
6 enforcement matters; is that true?

7 A. I wouldn't agree with that. I would not agree  
8 with the way you explained it.

9 Q. Well, you said -- let me do it this way.

10 A. You said non-criminal, and it says, "Perform law  
11 enforcement day or night," and the other.

12 Q. And I'm pointing to the part that says, "Assist  
13 in biological surveys, fish planting," et cetera.

14 A. Sure.

15 Q. Now, so you would put two-thirds --

16 A. Uh-hmm.

17 Q. -- as a percentage next to this large paragraph?  
18 What I'm saying is, isn't it true that part of that two-  
19 thirds --

20 A. Uh-hmm.

21 Q. -- is involved with biological surveys, fish  
22 planting, and other matters that are non-criminal  
23 enforcement in nature?

24 A. Sure.

25 Q. Okay. That was the question. Thank you. Okay.

1 Let me -- a couple more questions on that. Actually, let  
2 me just move along. You inspect commercial fishing  
3 operations, canneries, processors and fish markets and  
4 fish landings?

5 A. Yes, I do.

6 Q. Okay. And those inspections are not all  
7 involving criminal investigation, correct?

8 A. When I get involved, generally it is. They're  
9 asking for my help because they need bodies.

10 Q. Okay. Well, who's they?

11 A. The wardens.

12 Q. Okay.

13 A. My coworkers.

14 Q. Okay. So you are actually assisting in those  
15 investigations?

16 A. And sometimes taking on a caseload.

17 Q. Okay. So it says here that you serve arrest  
18 warrants.

19 A. Yes.

20 Q. Okay. About how many a year do you serve?

21 A. Again, as needed. Or I can't give you a  
22 specific. I do not know. Sometimes I don't -- I do not  
23 do one for a year, and sometimes I knock out three or  
24 four, so there you go.

25 Q. Okay. So would you say zero to three or four

1 would be accurate?

2 A. Okay.

3 Q. All right. Do you write search warrants?

4 A. No, I do not.

5 Q. It says in your Declaration on page eight, "I" --  
6 okay. I'm sorry. I'll withdraw that question.

7 Have you been involved in controlling riots?

8 A. No.

9 Q. Okay. You say that you -- have you ever  
10 testified in court as an expert witness?

11 A. No.

12 Q. You do assist in developing fishing and hunting  
13 regulations, laws, rules and policies?

14 A. I assist with the airplane, to get the  
15 policymakers up there so that they can do their job.

16 Q. Okay. You respond to and assist in investigating  
17 suspected pollution, oil and hazardous material spills?

18 A. Yes.

19 Q. Okay. And those issues may not necessarily be  
20 criminal, right?

21 A. I think just about all pollution is criminal.

22 Q. Well, are there accidents that occur where  
23 they're not -- there's not criminal conduct?

24 MR. ROSE: Objection. Vague. Calls for a legal  
25 conclusion.

1 MR. MESSING: Based on his prior answer.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me ask this  
3 question. What sort of pollutions issues do you enforce?

4 THE WITNESS: Oil spills. Could be something as  
5 simple as cow manure going into a community's drink  
6 water. Milk going into water and killing thousands of  
7 fish and the habitat around it. Diesel spills from car  
8 accidents and trucks.

9 BY MR. MESSING:

10 Q. And not all of these items are necessarily  
11 criminal, correct?

12 A. You know, again, I'm not there to say it is  
13 criminal. I'm there to report it as part of the element.

14 Q. So you don't know if it's criminal or not?

15 MR. ROSE: Objection. Asked and answered.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. But  
17 when you say reported as part of the element, are you  
18 referring to that it actually happened or that --

19 THE WITNESS: Yes. I'm reporting that it happened,  
20 and I do not know if it's criminal. It could be an  
21 accident. But that's not for me to --

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

23 THE WITNESS: -- to judge.

24 BY MR. MESSING:

25 Q. Okay. So you don't actually do anything past the

1 initial reporting in terms of further the  
2 investigation --

3 A. No.

4 Q. -- of these spills?

5 A. No, I do not.

6 Q. Okay. All right. A few more questions here.

7 You indicate that the Unit 7 non-peace officer employees  
8 you work with are dispatchers employed by the Department  
9 of Parks and Recreation, correct?

10 A. Yes.

11 Q. Okay. Do you ever have occasion to work with  
12 lifeguards in the Unit 7 bargaining unit?

13 A. I did one time.

14 Q. Okay. Was it a seasonal lifeguard?

15 A. I do not know.

16 Q. Do you ever have occasion to work with the Office  
17 of Emergency Services?

18 A. Yes.

19 Q. Okay. Do you know that OES has -- do you know  
20 whether OES has something called OES Coordinators?

21 A. Yes.

22 Q. Okay. Have you had occasion to work with OES  
23 Coordinators?

24 A. Through my chain of command.

25 Q. Okay. And let's get to your complaints about

1 your salary. Now, okay. So, first of all, you  
2 indicated -- did you indicate that you brought this  
3 salary issue to the attention of Joe Mello?

4 A. Yes, I did.

5 Q. Okay. And Joe Mello was the representative of  
6 the Fish and Game Wardens Association on the bargaining  
7 team?

8 A. He was the president at the time.

9 Q. And he was on the bargaining team for CSLEA?

10 A. That's what I was told.

11 Q. Okay. And do you -- are you -- strike that.

12 Isn't it true that you were aware that Joe Mello had  
13 failed to raise the issue of the additional salary  
14 adjustment for the Fish and Game Warden Pilots at the  
15 bargaining table?

16 A. He didn't state that he failed, no.

17 Q. Okay. But did you learn that?

18 A. I did not.

19 Q. Okay. At any time?

20 A. Only after we made a phone call to CSLEA.

21 Q. Okay. And CSLEA informed --

22 A. But they didn't say --

23 Q. Wait a minute. Let me finish my question. And  
24 you were informed by CSLEA that Mr. Mello had not raised  
25 that issue at the bargaining table for the Warden Pilots,

1 correct?

2 A. I was told that.

3 Q. Okay. Do you remember who told you that?

4 A. I do not.

5 Q. Okay. And despite the fact that you did not get  
6 the 25 percent increase -- well, let me break that down.  
7 You're aware that Fish and Game Wardens got up to a 25  
8 percent increase between COLAs and additional step  
9 increases?

10 A. We don't receive COLAs. I wish we did.

11 Q. Well --

12 A. That would be nice.

13 Q. Let me put it to you this way. Well, you are  
14 aware that Fish and Game Wardens were going to get up to  
15 25 percent of a combination of various types of  
16 increases?

17 A. Including step increases, which it would take you  
18 eight years to get to a top step.

19 Q. Are you at top step?

20 A. I am now.

21 Q. Okay.

22 A. But I had to do two more steps to get where I'm  
23 at in the last contract.

24 Q. Okay. And so now you're at top step.

25 A. Yes.

1 Q. Do you have additional steps, or are you done  
2 with the increases?

3 A. No. I am done with the increases.

4 Q. Okay.

5 A. I do have educational.

6 Q. Okay.

7 A. But that's it. It's not very much.

8 Q. Okay. But it didn't take you eight years to get  
9 the benefit of the step increases that you got?

10 A. I think -- I think it took six or seven. I do  
11 not know exactly how long it took. It took six or seven.

12 Q. Okay. The increases were negotiated in --  
13 starting with January of 2007.

14 A. Uh-hmm.

15 Q. Right? So between 2007 and 2009, you attained a  
16 nearly 17 percent pay increase between all of the  
17 different type of increases, including step increases,  
18 correct?

19 A. I think it was 17, somewhere around there.

20 Q. Okay. And that was over a period of two years,  
21 correct?

22 A. It was two years, and that includes the two step  
23 increases that I received.

24 Q. Okay. Okay. Now, you were upset about the eight  
25 percent additional increases that other Fish and Game

1 Wardens got on top of that, correct?

2 A. I was upset to the fact that not that they got  
3 it, but that we did not receive it.

4 Q. Okay. Now, after raising this issue to the  
5 attention of CSLEA, did you find out whether CSLEA went  
6 to DPA to try and seek the additional adjustment for the  
7 Warden Pilots?

8 A. Yes, I did.

9 Q. Okay. And who informed you of that effort?

10 A. It was -- you know, I went through -- I'm going  
11 to tell you that I went through my proper channels, and  
12 that was Joe Mello, my Association president, and he  
13 dealt with them. You'll have to ask him. I was -- it  
14 was -- I went through the proper channels and told it  
15 would go nowhere.

16 Q. Okay. The question was, who informed you that  
17 CSLEA went to DPA and asked to have the Warden Pilots'  
18 pay adjusted to reflect the same increases as the Fish  
19 and Game Wardens, if you remember?

20 A. If I -- if I recall, I called Personnel, then I  
21 called Joe. So I do recall now that I did call Personnel  
22 and asked. And they said, you are not included in  
23 that -- in the Wardens' -- Warden Pilots did get an  
24 increase, and -- but did not get the full package that  
25 Wardens did.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to  
2 strike it. But you got to listen to the question.

3 THE WITNESS: I'm not quite understanding it.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I know. Because  
5 it's (inaudible).

6 BY MR. MESSING:

7 Q. Okay. You said that you learned that CSLEA went  
8 to DPA --

9 A. Uh-hmm.

10 Q. -- to ask for an additional increase. Who told  
11 you that CSLEA went to DPA and tried to get an additional  
12 increase?

13 A. That was Joe.

14 Q. Okay.

15 A. And I think he did talk to either Kasey or  
16 Christine or somebody like that.

17 Q. And then when Joe told you that, was he still the  
18 President of the Fish and Game Wardens Association?

19 A. I do not know.

20 Q. Was it in the same time period as he -- you're  
21 reporting?

22 A. I think it was -- it was in the same time period.

23 Q. Okay. And did Joe tell you that DPA said that  
24 they were not going to give an increase to the Fish and  
25 Game Warden Pilots?

1           A. It was about a year later. And we kind of  
2           figured it out.

3           Q. Okay. And did he tell you that DPA had indicated  
4           that the reason -- one reason for this was that there was  
5           no retention and recruitment problem with the Fish and  
6           Game Warden pilots?

7           A. No. No. Not that I am aware of.

8           Q. Did anybody tell you that DPA --

9           A. I'd heard --

10          Q. Let me finish the question. That DPA indicated  
11          that there was no increase necessary because there was no  
12          retention and recruitment problem for Fish and Game  
13          Warden Pilots?

14          A. I did not hear that directly from anybody. I've  
15          heard that through the mill, so to speak, rumors and  
16          such. But I did not hear that directly that there was --  
17          that DPA had stated that.

18          Q. Okay. You are aware that the Fish and Game  
19          Wardens Association was taking the position that there  
20          was a large retention and recruitment problem for the  
21          rank-and-file Fish and Game Wardens, correct?

22          A. Uh-hmm. Right.

23          ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is that a yes?  
24          Okay.

25          THE WITNESS: Yes.

1 BY MR. MESSING:

2 Q. Okay. Now, at the time that you brought this  
3 issue to the attention of Joe Mello and he went to  
4 CSLEA --

5 A. Uh-hmm.

6 Q. -- how many vacancies were there of Fish and Game  
7 Warden Pilots?

8 A. I think three of our eight positions.

9 Q. You think?

10 A. I can't recall specific times, but that's where  
11 we're at now.

12 Q. Okay. I'm talking -- I'm not talking about now.  
13 I'm talking about at the time that this issue was brought  
14 to the attention of DPA.

15 A. Yeah, we tried -- we tried to hire a couple. We  
16 couldn't even hire a couple because of -- you know, I --  
17 we were just vacant.

18 Q. Okay.

19 A. We're vacant. So I can't give you specific  
20 numbers.

21 Q. You can't give me a number. Okay. And isn't it  
22 true also that Warden -- Fish and Game Warden Pilots  
23 don't make the same amount of money as Fish and Game  
24 Wardens?

25 A. That is correct.

1 Q. In fact, isn't it true that the -- or do you know  
2 if the top step for a Fish and Game Warden Pilot is  
3 \$6,891?

4 A. I'm not sure exactly what it is, but that sounds  
5 familiar.

6 Q. Okay. And does it sound familiar that a Senior  
7 Warden Pilot of the Department of Fish and Game makes top  
8 step \$7,575?

9 A. That's all?

10 Q. Per month.

11 A. Okay. I don't -- I don't know. I don't know.

12 Q. I'm sorry. Those were both monthly figures. Did  
13 you understand that?

14 A. Oh, okay. Yes, I do now.

15 Q. Does that sound familiar?

16 A. It sounds familiar.

17 Q. Okay. Do you happen to know how much more  
18 monthly Warden Pilots make than Fish and Game Wardens at  
19 the top step of each?

20 A. No, I do not.

21 Q. Okay. I just want to make one thing clear, if I  
22 may, with this next -- the last question. It's your  
23 testimony that Fish and Game Warden Pilots make a lot  
24 more than the Fish and Game Wardens; is that right?

25 A. I would not say a lot more. They make more.

1 Q. More. Okay. That's all I wanted.

2 MR. MESSING: And I'd like to move the Job

3 Description into evidence.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any objection on  
5 the Employer?

6 MS. TRUONG: No.

7 MR. ROSE: None.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: M is admitted.

9 (Exclusive Representative's Exhibit M  
10 received in evidence.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Further  
12 questions, Mr. Messing?

13 MR. MESSING: No. I think that'll do it.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Pass the  
15 witness. Ms. Truong?

16 MS. TRUONG: No.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

18 MR. ROSE: Yes, I do.

19 REDIRECT EXAMINATION

20 BY MR. ROSE:

21 Q. Do you need a break or some water?

22 A. No. Let's get it done.

23 Q. All right, Mr. Schales. Looking at Exhibit M by  
24 the Exclusive Rep, which is the Duty Statement.

25 A. Yes.

1 Q. Looking at the large -- the larger paragraph on  
2 top there, beginning with, "Performed law enforcement day  
3 and night," do you see that?

4 A. Yes.

5 Q. Going to the last sentence, full sentence in that  
6 paragraph, beginning with, "Assist in biological surveys,  
7 fish planting," and continuing on to herd counts at the  
8 end, do you see that?

9 A. Yes.

10 Q. What percentage out of 100 percent would you  
11 estimate you do that function, assist in biological  
12 surveys, fish planting, and going on through to physical  
13 game herd counts?

14 A. Of my flying duties, I would say half. It  
15 depends on the year. I'm in the air -- I'm in the  
16 airplane at night, a twin engine airplane over the  
17 Sierras, and looking for poachers or possibly illegal  
18 hunting activity. And sometimes I do that 80 percent of  
19 the time during those seasons. And then this time of  
20 year I'm doing surveys when there's not a lot of hunting  
21 going on, but maybe ducks or that sort of thing. And  
22 then I might see some other things going on. And I can  
23 see a lot from the airplane. So it just depends on the  
24 time of year.

25 Q. What if we were to say throughout a typical year

1 so that we can capture all the seasons in the year?

2 A. I'd say in the last -- I'm sorry. I interrupted  
3 you.

4 Q. Go ahead and -- go ahead and -- but in order for  
5 us -- I think it might be easier if we use 100 percent.  
6 That way we're not saying a percentage of a percentage.  
7 Follow what I'm saying?

8 A. Sure. Of my flying duties and which includes  
9 biological surveys, fish planting, conservation, law  
10 enforcement, herd counts, I would say at this time it's  
11 about half, half and half of my flying duties. So of my  
12 total time of that -- of that time in the air, half the  
13 time is spent with -- on enforcement, and then I'm on  
14 duty on the ground, too. So --

15 Q. Okay. Of your total time in the air, what  
16 percentage of that time would you say you're performing  
17 law enforcement duties? Or strike that.

18 When you're doing biological surveys, fish  
19 planting -- no.

20 When you're doing biological surveys and doing game  
21 herd counts, are you exclusively dedicated to that  
22 function, or are you performing any other functions at  
23 the same time?

24 A. No. I'm --

25 MR. MESSING: Object.

1 THE WITNESS: -- performing all --

2 MR. MESSING: Object. Leading.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

4 BY MR. ROSE:

5 Q. Okay. While you're performing those functions,  
6 are you -- are you doing anything else?

7 A. Yes. I'm working all the time looking and for  
8 violations, either streambed alterations, illegal hunting  
9 activity. My -- I am always working while I'm working  
10 doing radio telemetry at the -- the original mission  
11 might be to do radio telemetry or surveys. But if I see  
12 a animal lying on the ground and it's a elk and it's not  
13 elk season and there's not a hunter around, I think we  
14 might have an issue here with poaching, and there might  
15 be a vehicle in the area. So I am continuously looking.  
16 I'm always working as a law enforcement officer whether  
17 I'm working as a -- as a -- as an assistant to the  
18 scientists. I'm always continuously working as a law  
19 enforcement officer.

20 Q. You were asked when -- whether you've worked with  
21 an OES Coordinator. Do you remember that?

22 A. Yes.

23 Q. And you answered, yes, through your chain of  
24 command. Do you remember?

25 A. Yes.

1 Q. What did you mean by that?

2 A. Through training, preparing for any national  
3 emergency, being able to communicate and not have the  
4 problems that were inherent in 2001. It was really a  
5 mess in '01.

6 Q. When you work with OES Coordinators through your  
7 chain of command, do you have direct contact with them?

8 A. Yes, I do.

9 Q. How many times in the last year have you worked  
10 with an OES Coordinator?

11 A. That's not correct. Actually, I do not have  
12 direct contact with OES Coordinators other than I think  
13 it was the captain. I think he was a coordinator for the  
14 department, and I would get it through e-mail during  
15 training and working at the local level. So if there is  
16 an issue, if we were called to go out, then we're going  
17 to go, and through the chain of command and to assist, if  
18 needed.

19 Q. How often do you have interaction -- have you had  
20 interaction in the last year with an OES Coordinator  
21 direct?

22 A. I haven't had any in the last year.

23 Q. How about in the last five years direct contact  
24 with an OES Coordinator?

25 A. I think I recall probably maybe a half dozen

1 times. I can't give you a specific number. I -- just  
2 thinking back, and that includes e-mail, too. So we  
3 would get e-mails, training bulletins, information. I  
4 still get information via e-mail about terrorist  
5 suspects, goings on with -- in the general public, what  
6 to look out for if there is an issue with sabotage from  
7 terrorists. And I'm always looking while I'm flying  
8 doing that, too. So it's always in the back of my mind.  
9 So if that's what you mean, sure.

10 Q. You mentioned that you look at marijuana plants.

11 A. Yes.

12 Q. What are you -- explain for us what your duties  
13 are with respect to looking at marijuana plants.

14 A. Well, based on my training and experience, I've  
15 coordinated with the federal government, the local, the  
16 state government, assisting the military with  
17 communications, security while the U.S. drug czar was in  
18 the area. And when the UH-60's and the 58's were down  
19 below radio coverage, we were up there watching for them  
20 and communing -- communicating back to the base while we  
21 have had illegal activities going on and during that  
22 time.

23 Q. Okay. By the way, just for the record, you're  
24 wearing a polo shirt with a embroidered badge, your name  
25 on the right breast and a badge on the left. Wearing a

1 green hat with a badge embroidered on it. Looks like  
2 you're wearing some duty boots, black leather, and some  
3 green pants. And could you stand up, please?

4 A. Yes.

5 Q. You're wearing a badge on your belt. You're  
6 wearing a basket weave black belt. You've got a firearm  
7 in your right side. And what do you -- what's on the  
8 left?

9 A. A magazine and cuffs.

10 Q. All right. What are you -- how does what you're  
11 wearing today compare to what you would typically wear at  
12 work?

13 A. Yes, this is what I wear in the airplane, or I'll  
14 wear a Nomex jumpsuit with a shoulder holster and firearm  
15 and cuffs and spare magazines.

16 MR. ROSE: Okay. Thank you. Nothing further. And  
17 that leaves you six minutes, Gary.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

19 RECROSS-EXAMINATION

20 BY MR. MESSING:

21 Q. You don't wear a badge?

22 A. I do have a badge.

23 Q. No. I asked you do you wear -- you don't wear a  
24 badge, do you?

25 A. I am wearing a badge.

1 Q. You don't display it on your shirt?

2 A. This is -- according to our standard operating  
3 procedures, this is acceptable. But I do wear this badge  
4 next to my gun in case there's any question.

5 Q. Is that also acceptable procedure for Fish and  
6 Game Wardens who are in the field?

7 A. Yes.

8 MR. MESSING: Okay. No further questions.

9 MS. TRUONG: Nothing.

10 MR. ROSE: Nothing.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you, sir.

12 MR. MESSING: I beat you by five minutes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll go off the  
14 record. And we've concluded day four of these  
15 proceedings. Off the record.

16 (Off the record.)

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
18 We're back on the record. I have the presence of  
19 Mr. Shoemaker and I have the presence -- I don't have  
20 Townsend, but -- is he here?

21 MR. CLARK: Yeah.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah, bring him  
23 on in.

24 (Off the record.)

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. We're

1 back on the record. I need to give an admonition in  
2 regards to I have the witnesses Mr. Schales,  
3 Mr. Townsend, Mr. Shoemaker not to discuss your testimony  
4 with any other witnesses in this case. Of course, you're  
5 free to discuss your testimony with anybody at this  
6 counsel table here, including Mr. Lewis. And do you  
7 understand the admonition?

8 (Several voices said, "Yes.")

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Of course, once  
10 the case is over, you can talk it over with as much or  
11 little as you want. So, other than that --

12 MR. ROSE: I'd move admission of Petitioner's Y,  
13 Declaration of Gary Schales.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And so admitted.

15 (Petitioner's Exhibit Y received in  
16 evidence.)

17 MR. MESSING: And was my last exhibit also admitted?  
18 I think it was.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a  
20 second. If I haven't, it is.

21 MR. MESSING: Thank you.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: How's that? So,  
23 with that, we're off the record.

24 (Proceedings concluded.)

25

CERTIFICATION AND  
DECLARATION OF TRANSCRIBER

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3  
4 I, Leisa M. Miller, a duly designated transcriber of  
5 Vine, McKinnon & Hall, do hereby declare and certify  
6 under penalty of perjury that I have transcribed from a  
7 CD recording the proceedings in the matter of STATE OF  
8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,  
9 Petitioner, and CALIFORNIA STATEWIDE LAW ENFORCEMENT  
10 ASSOCIATION, Exclusive Representative, Unfair Practice  
11 Charge No. SA-SV-171-S, which recording was duly recorded  
12 at Sacramento, California on February 27, 2009, and that  
13 the foregoing pages 1 through 249 constitute a true,  
14 complete and accurate transcription of the aforementioned  
15 recording to the best of my ability.

16 Dated this 16th day of March, 2009, at Dixon,  
17 California.

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